

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

OTIS B. WINBUSH,
Petitioner,

v.

Civil No. 3:20cv503 (DJN)

UNKNOWN,
Respondent.

MEMORANDUM OPINION


The Court received a letter from Petitioner. Given the content of this letter, the Court deemed it appropriate to give Plaintiff the opportunity to pursue this action as a petition for a writ of habeas corpus under 28 U.S.C. § 2254. *See Rivenbark v. Virginia*, 305 F. App'x 144, 145 (4th Cir. 2008) (finding that district court should have construed inmate's filing as a § 2254 petition). Accordingly, by Memorandum Order entered on July 17, 2020, the Court sent Petitioner the form for filing a 28 U.S.C. § 2254 petition. The Court informed Petitioner if he wished to proceed pursuant to 28 U.S.C. § 2254, he must complete the § 2254 Petition form and return the same to the Court within twenty (20) days of the date of entry thereof. The Court warned Petitioner that the failure to return to the § 2254 Petition form within twenty (20) days of the date of entry thereof would result in the dismissal of the action. *See Fed. R. Civ. P. 41(b)*.

More than twenty (20) days have elapsed since the entry of the July 17, 2020 Memorandum Order and Petitioner has not responded. Accordingly, the action will be **DISMISSED WITHOUT PREJUDICE**.

An appeal may not be taken from the final order in a § 2254 proceeding unless a judge issues a certificate of appealability. 28 U.S.C. § 2253(c)(1)(A). A certificate of appealability will not issue unless a prisoner makes “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). This requirement is satisfied only when “reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were ‘adequate to deserve encouragement to proceed further.’” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)). No law or evidence suggests that Petitioner is entitled to further consideration in this matter. The Court will DENY Petitioner a certificate of appealability.

An appropriate order will accompany this Memorandum Opinion.

Let the Clerk file a copy of the Memorandum Opinion electronically and send a copy to Petitioner.

/s/ 
David J. Novak
United States District Judge

Richmond, Virginia
Dated: September 4, 2020